**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CWP No. 7377 of 2006
Date of decision:22-3-2007

Shri Himesh Sharma .....Petitioner

Versus

State of Punjab and others ..... ..... Respondents.

**CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL**
**HON'BLE MR. JUSTICE AJAI LAMBA**

Present: Mr. Akshay Bhan, Advocate,
for the petitioner

Mr. R.S.Bawa, Advocate
for respondent No.3

Mr. H.S. Bakshi, Advocate,

Mr. M.K.Garg, Advocate,
for respondents No. 5 to 9.

**K.S.GAREWAL, J.**

Himesh Sharma has filed C.W.P.No. 7377 of 2006 while his mother Prem Sharma has filed C.W.P. No. 3731 of 2006 through her son Himesh Sharma acting as her attorney. The petitioners are seeking a direction in the nature of mandamus to direct Municipal Corporation, Amritsar, to restore the original Town Planning Scheme No.53 which was finalized in the year 1980 and a further direction to demolish the construction which has been raised on land earmarked for the community centre under the said scheme. Some other consequential reliefs have also been claimed.

According to the petitioners they were residents of Kashmir Avenue, Amritsar and were aggrieved by illegal construction coming up on land falling under the Town Planning Scheme aforementioned. This scheme

had been in existence in the year 1942 and was finalized in the year 1980. The construction was coming up on the area earmarked for community centre, park etc. The construction was in clear violation of the scheme and in connivance with the officials of the Municipal Corporation, Amritsar.

The petitioners have pleaded that they had become owners of khasra No. 392/3, Kashmir Avenue through sale deed executed in their favour on July 3, 1998. Ashok Seth and some others had filed a suit for permanent injunction against the Muncipal Corporation to restrain it from interfering in their peaceful possession and from dispossessing them from certain specified khasra numbers by stopping the construction. The suit was decreed on May 27, 2002. Municipal Corporation filed appeal which was partly allowed by the learned District Judge, Amritsar on November 27, 2003. The said judgment was final as no second appeal was filed.

The petitioners rely upon the judgment of the learned (Additional) District Judge which has been annexed as Annexure P-1. The learned District Judge modified the findings of the learned Trial Judge and held that 620 sq. yds, out of khasra nos. mentioned in the suit, which had been acquired by the Municipal Corporation under Town Planning Scheme No.53, could be used for public purpose which included construction of community centre. However, Muncipal Corporation had no right to interfere in the other property of Ashok Seth and others.

The further grievance of the petitioners is that some builders,who enjoyed close links with Muncipal Corporation, had started construction on the area meant for community centre and park. The petitioners submitted a representation on January 13, 2006 but no action was taken. The petitioners also served a legal notice on the respondents to

stop them from raising further construction and to demolish the illegal construction. However, when the petitioners came to know that the Muncipal Corporation was now trying to amend the original Town Planning Scheme in order to favour the persons who were raising construction, they filed the present writ petition on May 10, 2006.

The petitioners alleged that public authorities were helping the land mafia and encroachers of land to either usurp the public land or to buy it at a throwaway price. Therefore, serious note should be taken of the episode. The residents were also sufferers because they were being deprived of the community centre and public park which had been planned in the area.

A short reply was filed by Commissioner Municipal Corporation on behalf of the respondents 1 to 3 wherein it was pleaded that after the judgment of the learned District Judge, Amritsar dated November 27, 2003 the matter was closely examined in the legal branch of the Corporation, the judgment of the learned Judge was accepted and it was decided not to agitate the matter further in appeal. In view of the judgment, the Town Planning Scheme was amended through resolution No. MTP-7 passed on October 20, 2004 and under the amended site plan 25% area left for the Corporation had been used for a 18'-5" wide road and the remaining area had been released. The Community Centre had been shifted to a different place. A true copy of the amended site plan was filed as Annexure R-3. Reply was filed by Deputy Commissioner, Amritsar who controverted all the allegations with regard to the representation made to him. On July 6, 2006 Ashok Seth and five others were impleaded as respondents 5 to 9. They appeared through their Special Attorney Lakhwinder Singh and filed

their detailed reply.

The original litigation before the Civil Courts at Amritsar had been between Ashok Seth and others on the one hand and the Municipal Corporation on the other. This litigation led to release of 620 Sq. yards (25% of the area of the land in dispute between the parties). The dispute was inter partes Ashok Seth and Municipal Corporation. The judgment and decree passed by the learned District Judge had to be necessarily implemented since it was binding on the Municipal Corporation and effected the rights of the parties to the litigation. The present petitioners were not parties to the litigation and, therefore, cannot complain if the so-called amendment of the scheme was being carried out in accordance with Court's orders. The action of the Municipal Corporation was legal, valid and in accordance with the judgment and decree dated November 27, 2003. Moreover, the community centre had not been abandoned but relocated.

We find no merits in these petitioners. Both the petitions are hereby dismissed.

**(K.S.GAREWAL)**
**JUDGE**

**(AJAI LAMBA)**
**JUDGE**

March 22, 2007
RSK